

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

MAW Communications, Inc.,

Complainant,

v.

PPL Electric Utilities Corporation,

Defendant.

File No.

POLE ATTACHMENT COMPLAINT

Maria T. Browne
D. Van Fleet Bloys
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W.,
Suite 800
Washington, D.C. 20006
Tel: (202) 973-4281
Fax: (202) 973-4499
Attorneys for MAW Communications, Inc.

February 8, 2019

4826-0196-3396v.11 0112923-000001

SUMMARY

MAW Communications, Inc. (“MAW”) has successfully deployed competitive telecommunications and broadband services to areas of Southeastern Pennsylvania for over two decades. The company’s unmarred safety record, history of exceptional customer service, reasonable price points, and ensuing customer loyalty have enabled it to compete effectively in the region. In 2014, MAW entered into an agreement with the City of Lancaster to upgrade the City’s outmoded municipal network and provide telecommunications and high-speed broadband to support City services and serve Lancaster residents and institutions through a joint project known as LanCity Connect. Not long after, MAW also entered into a service agreement with Nova Stream to provide critical telecommunications services to Penn Medicine’s Lancaster General Hospital. However, MAW’s delivery of these crucial, competitive services to the City of Lancaster, its residents, the hospitals and other institutional customers is in serious jeopardy.

To deploy telecommunications services to Lancaster and the surrounding areas, MAW depends upon access to poles, ducts, and rights-of-way over which PPL holds a monopoly. However, for more than a year, PPL has denied MAW access to PPL poles, including by dismantling portions of its network, refusing MAW access to repair service outages to its own facilities, and refusing to process applications that were filed over nine months ago to rectify disputed unauthorized attachment allegations. PPL has removed over 100 of MAW’s service drops, disrupting service to over 70 customers, with additional removals promised unless MAW capitulates to PPL’s unreasonable and unlawful demands to pay unrelated disputed charges. PPL also refuses to take reasonable steps to enable the transfer of the City’s existing municipal network to MAW so that it can use the attachments to deploy upgraded facilities crucial to the LanCity Connect project.

While PPL purports to justify its denials as safety related, in truth, the parties' entire dispute stems from PPL's transition to an online pole attachment application portal, which has been plagued with problems since its inception, and PPL's outright refusal to work with MAW and the City to rectify glitches and misunderstandings that occurred during that process. PPL's sole mission now appears to be to teach MAW a lesson while the City residents, businesses and institutions go without competitive telecommunications and broadband services.

As detailed in another complaint filed with the FCC against PPL,¹ when the company transitioned to its online application portal, it eliminated advance collaboration with attachers, and began churning out excessive survey charges and make-ready estimates, which included correction of pre-existing noncompliance and other unreasonable make-ready practices, thereby thwarting new attachments by competitive providers. For example, because of an initial glitch in the portal, PPL now automatically assigns the top-most position in the communications space to new attachers regardless of available space lower on the pole, resulting in unnecessary make-ready work. To make matters worse, PPL's new system obfuscates the nature and scope of its charges by failing to provide any details about the "engineering" and "make-ready" charges presented as lump-sum amounts linked to entire applications.

When MAW challenged and refused to pay excessive survey and make-ready charges associated with four new-build applications and MAW's customers, the City of Lancaster and Lancaster General Hospital, requested PPL to engage in FCC mediation (as it had with another attacher), PPL filed suit in state court, alleging incorrectly that MAW had attached facilities without requisite authorization thereby creating exigent safety violations. PPL did so the same

¹ See *Zito Canton, LLC v. PPL Electric Utilities Corp.*, Proceeding No. 17-284, File No. EB-17-MD-005 ("*Zito Canton Complaint*").

day it had organized a meeting with MAW and the Pennsylvania PUC, purportedly to review and better understand the nature of MAW's attachments, without ever disclosing its intent to file suit.

PPL's complaint conflated MAW facilities that had been attached lawfully pursuant to provisions in the parties' Pole Attachment Agreement for "rebuilt" using the J-and-raise construction method, and service drops (which the Agreement expressly excludes from the application process), with the new-build attachments for which excessive make-ready estimates were produced and which MAW never made. PPL mischaracterized MAW's attachments as creating exigent life-threatening safety violations due primarily to their proximity to ungrounded streetlights when in fact the attachments complied with the NESC—either because they were grandfathered or used all-dielectric self-supporting fiber, as explained by qualified professional engineers in a January 7, 2018 report.

After a failed stipulation between the parties, and a two-day hearing, an order was issued in the state court case, directing MAW to submit applications to the online portal for all alleged unauthorized attachments and requiring PPL to approve them promptly and to allow MAW access to work on its facilities, including to repair service outages. The order also allowed PPL to remove attachments (despite the conclusions of the January 7 professional engineering report that MAW's attachments had not created safety issues), but the expectation was that the parties would cooperate to avoid service disruptions. While MAW immediately submitted applications for all of its attachments using PPL's online application process, PPL did not uphold its obligations under the order. Nine months later, PPL still refuses to provide MAW access to repair service outages, or to process MAW's applications. PPL's latest excuse? MAW has not paid unrelated disputed survey charges for which PPL refuses to provide billing details, or acceded to PPL's most recent demands for unreasonable unauthorized attachment penalties.

(MAW has paid attachment rent since 2015 and paid for a PPL survey of the attachments).

Meanwhile, PPL continues to dismantle MAW's network, and refuses to allow MAW to work on the attached facilities that remain.

Unless PPL's punitive and abusive practices are halted and remedied, PPL's tactics will effectively undermine key policy objectives of this Commission, including the deployment of broadband services by competitive providers. The Commission should act swiftly and firmly in rebuking PPL, ordering immediate access for MAW, and awarding damages.

TABLE OF CONTENTS

I. Jurisdiction and Parties	8
II. Background and Facts.....	10
III. Discussion.....	35
A. PPL Has Engaged in an Ongoing Unlawful Denial of Access.....	35
1. PPL Has Denied MAW Access to the Rebuilt Network	36
2. PPL Has Denied MAW Access to Its Service Drops	37
3. PPL’s Refusal to Process MAW’s Pole Attachment Applications Unless MAW Pays Unreasonable and Unsubstantiated Pre-Attachment Engineering and Make- ready Charges Constitutes an Unlawful Denial of Access	39
B. PPL Has Effectively Denied MAW Access to Its Poles	40
1. PPL Has Effectively Blocked MAW From Exercising Its Self-Help Remedies.....	40
2. PPL’s Make-ready Policies Effectively Deny MAW Access to PPL’s Facilities	42
IV. Information Designation	44
V. Counts	44
VI. Relief Requested.....	45

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

MAW Communications, Inc.,

Complainant,

v.

PPL Electric Utilities Corporation,

Defendant.

File No.

COMPLAINT

MAW Communications, Inc. (“MAW”) respectfully submits this Pole Attachment Complaint against PPL Electric Utilities Corporation (“PPL” or “Pole Owner”) pursuant to Subpart J of the Federal Communications Commission (“FCC” or “Commission”) Rules, 47 C.F.R. §§ 1.1401 *et seq.* for an ongoing denial of access to PPL’s poles. PPL’s actions to repeatedly and systematically deny MAW access to its poles and dismantle MAW’s existing plant violate the FCC’s rules and thwart the FCC’s goals of promoting affordable and prompt broadband deployment. Since 2016, PP&L has engaged in an ongoing denial of access through a pattern of conduct and policies that have prevented MAW from deploying its planned expansion of facilities, have prevented MAW from maintaining or repairing its existing plant, and have led to the removal of over 100 of MAW’s attachments to date. Despite clear direction from the FCC that pole owners must provide prompt, affordable access to poles to facilitate broadband deployment, PPL has refused to do so. Accordingly, MAW respectfully requests that the Commission take action to halt PPL’s unjust and unreasonable practices, and instruct PPL to

allow MAW access to PPL's poles to maintain and deploy its network and restore connectivity to its customers.

I. JURISDICTION AND PARTIES

1. The Commission has jurisdiction over this action under the provisions of the Communications Act of 1934, as amended, including, but not limited to, Section 224 thereof, 47 U.S.C. § 224 (hereinafter "Section 224").

2. The Commission has the authority and the duty to "regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions." 47 U.S.C. § 224(b)(1); *see also* 47 C.F.R. § 1.1401.

3. Pursuant to Section 224(f), a utility must "provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it." 47 U.S.C. § 224(f)(1).

4. Pursuant to Section 224(b)(2), the Commission is charged with prescribing by rule regulations to carry out the provisions of Section 224. 47 U.S.C. § 224(b)(2).

5. The Commission has implemented rules governing a utility's obligations to provide access upon just and reasonable rates terms and conditions. *See* 47 C.F.R. § 1.1401 *et seq.*

6. Complainant MAW provides telecommunications services and broadband internet access to businesses and residents in Pennsylvania. MAW's network supports the provision of mobile backhaul and other high-speed services (including data, video, voice, and advanced E911 service) to businesses, households, public safety agencies and other critical community

organizations and institutions. MAW has a general office address of 419 Washington Street, PO Box 978, Reading, PA 19603.

7. Respondent PPL is an investor-owned Pennsylvania electric utility in the business of providing electric transmission and distribution services. PPL has a general business address of 2 N. Ninth Street, Allentown, PA 18101-1179.

8. PPL owns or controls poles in the State of Pennsylvania that are used for wire communication.

9. MAW alleges, upon information and belief, that PPL is not owned by any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

10. MAW is attached to poles owned and controlled by PPL.

11. The Commonwealth of Pennsylvania, including its political subdivisions, agencies and instrumentalities, does not regulate pole attachments in the manner established by Section 224, which would preempt the jurisdiction of this Commission over pole attachments in Pennsylvania.²

² See *Corrected List of States That Have Certified That They Regulate Pole Attachments*, WC Docket No. 07-245, Public Notice, DA 08-653 (rel. Mar. 21, 2008). The PA PUC recently opened a proceeding to consider whether the PUC should assume jurisdiction from the FCC over pole attachments. See *In re of Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, Notice of Proposed Rulemaking, Docket No. L-2018-3002672 (adopted July 12, 2018). Parties have filed comments but the PUC has not taken any further action. In accordance with the Pennsylvania Regulatory Review Act, the Independent Regulatory Review Commission (“IRRC”) reviewed the PA PUC’s proposed regulations. See 71 Pa. Stat. Ann. § 745.5(g). In December 2018, the IRRC provided comments on the proposed regulations and directed the PA PUC to respond. See Pennsylvania Public Utility Commission Regulation #57-323 (IRRC #3214), Comments of the Independent Regulatory Review Commission (Dec. 24, 2018), available at <http://www.irc.state.pa.us/docs/3214/IRRC/3214%2012-24-18%20COMMENTS.pdf>. The IRRC noted that “[g]iven the number of issues identified by the PUC and the diverse responses provided by the regulated community, we question the need for the rulemaking at this time,”

12. Attached to this Complaint is a certificate of service certifying that PPL and the Pennsylvania Public Utility Commission were served with copies of the Complaint.

II. BACKGROUND AND FACTS

13. Founded in 1997, MAW is a family-owned Pennsylvania telecommunications carrier with a Certificate of Public Convenience (“CPC”) issued by the Pennsylvania Public Utility Commission (“PA PUC”) to provide facilities-based telecommunications services in Pennsylvania.³

14. MAW’s fiber optic network includes over 4,500 strand miles of fiber in Berks and Lancaster counties.⁴

15. MAW provides telecommunication services to health, governmental, and educational institutions; local governments; and telecommunications carriers, including transport services for nationwide wireless carriers.⁵

16. To construct its fiber optic network in Lancaster and Berks counties, MAW requires access to PPL owned or controlled poles.⁶

17. MAW and PPL entered into a Pole Attachment Agreement in 2002 setting forth the terms of MAW’s access and attachment to PPL poles. The Pole Attachment Agreement became effective January 1, 2003 and is in effect today.⁷

explaining that because of recent updates to the FCC’s rules, the IRRC “believe[s] it would be in the public interest to start with a new proposed rulemaking.” *Id.* at 1-2. To date, the PA PUC has not responded to the IRRC’s comments or undertaken a new proposed rulemaking.

³ See Declaration of Frank T. Wiczowski (“FW Decl.”), attached hereto as Attachment A, at ¶¶ 2, 4 and Exh. 1 (MAW Communications Inc. Certificate of Public Convenience).

⁴ See FW Decl. ¶ 5.

⁵ See Declaration of Mindy Wiczowski (“MW Decl.”), attached hereto as Attachment B, ¶ 4.

⁶ See FW Decl. ¶ 6.

⁷ A copy of the parties’ Pole Attachment Agreement (“PA”) is attached hereto as Attachment C.

MAW's Lancaster Project

18. In December 2014, MAW entered into a Municipal Carrier Agreement (“MCA”) with the City of Lancaster (“Lancaster” or “the City”) to rebuild the network that supports the City’s traffic controllers and the Lancaster Community Safety Coalition’s (“LCSC”) camera network and to deploy Pennsylvania’s first community broadband network, “LanCity Connect.”⁸

19. MAW’s existing and planned network facilities in the City provide control and monitoring of hundreds of cameras and traffic lights, as well as broadband and telecommunications services for health care facilities, the City Police Department, City and County Administration Services, and Public Works, including water services, street services, code services, administration services, and other similar services. MAW also has an agreement to provide broadband and telecommunications services to Penn Medicine’s Lancaster General Hospital facility (“LGH”), but has been unable to turn up services to LGH because of its dispute with PPL. The LanCity network also serves retail broadband customers; currently, MAW has approximately 300 residential and business customers on this network.⁹

20. The LanCity Connect project involves over 50 route miles of aerial plant—27 route miles of existing fiber and approximately 26 route miles of planned fiber—requiring attachments to over 2,000 utility poles in PPL’s service area.¹⁰

21. MAW’s existing and planned network in the City of Lancaster is an all-fiber network. The fiber utilized by MAW is lightweight, particularly as compared to copper and older coaxial facilities and does not conduct electricity.¹¹ Some of the fiber cable that MAW

⁸See FW Decl. ¶ 8 and Exh. 2 (Redacted Municipal Carrier Agreement between the City of Lancaster and MAW).

⁹ See FW Decl. ¶ 9.

¹⁰ See Declaration of Eron Lloyd (“Lloyd Decl.”), attached hereto as Attachment D, ¶ 4.

¹¹ FW Decl. ¶ 10.

deploys is attached using steel strand and some of the cable is all-dielectric self-supporting (“ADSS”) cable. ADSS service drop cable typically weighs less than 20 pounds per 1,000 feet of strand and is comparable in size to a drinking straw.¹² By comparison, older copper feeder cables can weigh as much as 5,000 pounds per 1,000 feet.¹³ The physical characteristics of the ADSS portion of MAW’s network allows MAW’s fiber to be placed closer to electric facilities than can conductive telecommunications cables.¹⁴

22. As part of the MCA, MAW assumed the rights and responsibilities for certain existing City and LCSC fiber and attachments in the City of Lancaster.¹⁵

23. MAW received permission from LCSC to assume ownership of LCSC’s 475 fiber optic cable attachments and promptly notified PPL.¹⁶ However, once MAW began the process of rebuilding the LCSC fiber network, it discovered that the City and LCSC’s records were incomplete, and that the City and LCSC in fact had 960 existing attachments on PPL poles. As a result, MAW endeavored to record all relevant information regarding the attachments to correct the City and LCSC’s lapse. Once the rebuild was complete, MAW alerted PPL to the total number of attachments, explained that the City’s and LCSC’s records were not accurate, and told PPL that profile sheets, photos, and videos of all 960 attachments (data and records created by MAW) were available upon request.¹⁷

24. Moreover, despite a promise to do so in 2015, the City and LCSC will not transfer their remaining attachments to MAW until MAW and PPL agree upon a remediation plan to

¹² FW Decl. ¶ 11 and Exh. 3 (Photograph comparing cable to drinking straw).

¹³ FW Decl. ¶ 11.

¹⁴ See FW Decl. ¶ 12.

¹⁵ See FW Decl. ¶ 13.

¹⁶ See FW Decl. ¶ 14 and Exh. 4 (Letter from Wes Farmer, Ph.D, Executive Director, LCSC, to William Klokis, Pole Attachments Manager, PPL (Mar. 17, 2015)).

¹⁷ See FW Decl. ¶ 16 and Exh. 5 (Letter from Frank Wiczowski, President, MAW Communications, to PPL Joint Use – Pole Attachments Division (Jan. 15, 2016)).

address the parties' dispute concerning alleged unauthorized attachments. As such, the City currently retains 379 attachments and LCSC retains 380 attachments as of today that were intended to be transferred to MAW.¹⁸

25. To construct its network in Lancaster, MAW utilizes at least three different types of attachments on PPL poles that trigger three different levels of review under MAW's pole attachment agreement with PPL. These include (1) new fiber routes to extend the existing network ("new build"),¹⁹ (2) temporary attachments using a J-hook ("J-and-raise") to replace existing deteriorated plant,²⁰ and (3) customer service drops on the existing network.²¹

"New Build" Construction

26. As part of its LanCity Connect and LGH projects, MAW must build and install significant amounts of new fiber along routes where there is no existing City, MAW, or LCSC fiber. In accordance with the Pole Attachment Agreement, MAW applied to PPL to construct this portion of the network. MAW has not made any attachments for this "new build" network.²²

27. Specifically, beginning in January 2016, MAW submitted its first four attachment applications to extend the backbone network to support traffic sensors, cameras, and the LanCity Connect and LGH projects. In response, PPL issued extremely high pre-construction engineering and make-ready estimate "quotes" to complete these attachment applications.²³

¹⁸ See FW Decl. ¶ 16.

¹⁹ See PA Article 6 (setting forth the process for new attachment installation)).

²⁰ See PA Article 9 (providing the process to rebuild existing attachments)).

²¹ See PA Section 1.18 (defining "Service Drop Attachment") and Section 6.4 (excluding service drop attachments from requiring PPL authorization prior to attachment)).

²² See FW Decl. ¶ 17.

²³ See FW Decl. ¶ 18 and Exh. 6 (PPL Quote Number 81011517-3 (Apr. 7, 2016); PPL Quote Number 81013474-3 (Nov. 15, 2016); PPL Quote Number 81013478-3 (Nov. 15, 2016); PPL Quote Number 81013546-3 (Dec. 1, 2016)).

28. **First**, PPL’s 2016 pre-construction engineering and make-ready “quotes” were extremely high. The make-ready estimates were high in part due to the fact that PPL required that any new attaching entity—in this case MAW—occupy the highest, typically occupied point on the pole rather than available space lower on the pole, which resulted in substantially more make-ready work than was necessary.²⁴

29. As a result, the new attacher must pay to move all existing attachments down to new positions and place the new attachment on top of the pole’s communications space, forcing make-ready on nearly every pole because there are few poles that do not have any attachments located in the topmost position. In many cases, an attachment can be made below other facilities consistent with the National Electrical Safety Code (“NESC”), but PPL prohibits connections below the ILEC regardless of whether space is available per the NESC.²⁵

30. Requiring the newest attacher to occupy the uppermost attachment location forces unnecessary make-ready. For example, PPL estimated that of the 279 total poles in MAW’s initial submission, 137 would require make-ready based on PPL’s engineering, nearly fifty percent of poles submitted. In contrast, in each of the several paths that MAW designed along the same route, using other available space in the communications zone, make-ready would be required on only 2 poles, representing less than two percent of the total number of poles identified by PPL as having required make-ready.²⁶

²⁴ See FW Decl. ¶ 19.

²⁵ See FW Decl. ¶ 20.

²⁶ See FW Decl. ¶ 21.

31. When MAW first raised the attachment location issue with PPL in 2016, PPL attributed the problem to a “glitch” in PPL’s online portal forcing all new attachments to assume the topmost position on the pole.²⁷

32. PPL estimated that it would cost over \$200,000 to fix the software “glitch” requiring any new attacher to assume the topmost position on the pole. When MAW offered to pay to fix the “glitch,” PPL refused, and thus the portal glitch became PPL’s official policy.²⁸

33. In the vast majority of instances where PPL is mandating unnecessary make-ready, there is enough room on the pole for the new attachment to be installed in compliance with the NESC without relocating existing attachments and still allowing for continuity in the new attacher’s facilities.²⁹

34. PPL’s policy mandating that new attachers occupy the highest point on the pole causes extra make-ready work and needlessly increases the make-ready costs associated with each pole.³⁰

35. ***Second***, the 2016 “quotes” were not sufficiently detailed for MAW to fully assess the reasonableness of the charges. The 2016 quotes break out charges between “Make Ready – Construction” and “Make Ready – Engineering,” but do not identify any further details substantiating the charges, rendering them insufficient for MAW to assess or verify the reasonableness of the charges.³¹

²⁷ See FW Decl. ¶ 22.

²⁸ See FW Decl. ¶ 23.

²⁹ See FW Decl. ¶ 24.

³⁰ See FW Decl. ¶ 25.

³¹ See FW Decl. at Exh. 6 (PPL Quote Number 81011517-3 (Apr. 7, 2016); PPL Quote Number 81013474-3 (Nov. 15, 2016); PPL Quote Number 81013478-3 (Nov. 15, 2016); PPL Quote Number 81013546-3 (Dec. 1, 2016)).

36. Together, PPL's 2016 quotes total \$56,624 in "Make Ready – Engineering" and \$141,926 in "Make Ready – Construction" charges. These quotes average \$202.95 per pole in pre-construction engineering costs and \$1,035.96 per pole for make-ready.³² Based on rough math using the limited information PPL provided, MAW estimated these charges to be up to ten times higher than historically seen from PPL or other Pennsylvania pole owners.³³ MAW found these quotes to be inconsistent with its Pole Attachment Agreement and federal law. Cumulatively, extrapolated to MAW's planned network using PPL poles, these proposed charges would increase the cost of MAW's planned network up to or exceeding \$2.5 million in pre-engineering and make-ready charges alone.³⁴

37. Upon receipt of the 2016 quotes, MAW formally disputed the amounts³⁵ and began executive discussions with PPL to resolve the dispute. MAW asked for additional detail regarding the basis for the quotes, but PPL did not provide any additional detail.³⁶ MAW has been unable to reach a resolution with PPL regarding the 2016 quotes.³⁷

³² Shortly after MAW complained that the proposed costs for pre-construction inspections and make ready estimates were outrageous, PPL filed suit and secured a court order preventing MAW from accessing its plant on PPL poles. *See PPL Elec. Util. Corp. v. MAW Commc'ns, Inc.*, Complaint, Ct. Comm. Pl. of Lehigh Cty., Pa., No. 2017-C-3755 (filed Dec. 5, 2017) ("Lehigh County Complaint").

³³ *See* FW Decl. ¶ 26.

³⁴ *See* FW Decl. ¶ 27.

³⁵ Importantly, PPL's own letterhead styles these documents as "quotes," not invoices. *See* FW Decl. at Exh. 6 (PPL Quote Number 81011517-3 (Apr. 7, 2016); PPL Quote Number 81013474-3 (Nov. 15, 2016); PPL Quote Number 81013478-3 (Nov. 15, 2016); PPL Quote Number 81013546-3 (Dec. 1, 2016)).

³⁶ *See* FW Decl. at Exh. 7 (Email from Michael Shafer to Eric Winter and Jeffrey Franklin (July 18, 2018) (attempting to clarify that escrow drawdown request was for engineering costs incurred but providing no further detail); *id.* at Exh. 8 (Letter from Eric E. Winter, Prince Law Offices, P.C. (counsel to MAW) to Joseph S. D'Amico Jr., Fitzpatrick Lentz and Bubba (counsel to PPL) (Aug. 27, 2018) (explaining that PPL's lump sum invoices do not provide MAW sufficient detail to substantiate PPL's charges)).

³⁷ *See* FW Decl. ¶ 28.

38. PPL is demanding that MAW pay \$56,624 in charges for “Make Ready – Engineering” as well as costs related to the removal of MAW’s attachments, unauthorized attachment penalties of five years back rent for each year that the attachments have been in place (contrary to the terms of the Pole Attachment Agreement), and for “PPL time spent managing progress under Court Order September_November” for a total of \$246,867.62.³⁸ MAW disputes that it owes these amounts. Consistent with the terms of the Pole Attachment Agreement, MAW has paid PPL’s fees for 428 attachments in Lancaster since 2015, totaling \$13,700.28.³⁹ MAW also paid PPL for \$14,394.38 and \$30,535.80 for a survey of its attachments performed by Katapult, which PPL claimed was necessary but which did not reveal any attachments beyond those identified by MAW during the rebuild, the results of which MAW offered to PPL on numerous occasions.⁴⁰

39. PPL is refusing to provide supporting detail or entertain MAW’s dispute concerning the make-ready engineering charges associated with MAW’s four new build applications.⁴¹ Section 21.3 of the Pole Attachment Agreement provides that attempts to reach a resolution need not extend beyond 120 days at which point the disputing party may file a complaint with the appropriate regulatory body.⁴²

40. In a letter to PPL dated January 28, 2019, MAW counsel requested executive level discussions with PPL.⁴³ In a letter dated February 4, 2019, PPL counsel presented PPL’s

³⁸ See FW Decl. at Exh. 9 (PPL Payment Demand Summary).

³⁹ See FW Decl. at Exh. 10 (PPL Invoices for MAW attachments for the years 2015, 2016, and 2017).

⁴⁰ See FW Decl. ¶ 29.

⁴¹ See FW Decl. ¶ 30.

⁴² See PA Section 21.3.

⁴³ See Letter from Maria Browne, Davis Wright Tremaine LLP, to Michael J. Shafer, PPL requesting executive-level discussions (Jan. 28, 2019), attached hereto as Attachment E.

version of events and stated that PPL would not meet with MAW until it pays outstanding disputed charges.⁴⁴

41. On March 23, 2017, citing the negative impacts of “PPL’s make-ready demands,” MAW’s leadership, together with the leadership of Lancaster General Hospital and the Mayor of Lancaster, wrote to PPL seeking to resolve any differences “before pursuing legal remedies” and requested a response within ten business days.⁴⁵

42. On August 24, 2017, the City of Lancaster, through counsel, once again formally requested an executive-level meeting with PPL, MAW, and Lancaster General Hospital to resolve the make-ready issue by September 8, 2017.⁴⁶ If resolution was not met, the City of Lancaster and MAW requested PPL’s consent to FCC mediation. Resolution was ultimately not met in September 2017 and PPL did not formally consent to FCC mediation.⁴⁷

43. In October 2017, Zito Canton filed a pole attachment complaint against PPL raising similar concerns about PPL’s online application portal and excessive make-ready and engineering charges.⁴⁸

Upgrading Existing Facilities with “J-and-Raise” Method

44. As a separate part of its LanCity Connect project, MAW sought to upgrade and rebuild the existing “multimode” fiber network in use for the Traffic and Camera network

⁴⁴ See Letter from Thomas B. Magee, Keller and Heckman LLP (counsel to PPL) to Maria Browne, Davis Wright Tremaine LLP, denying MAW’s request for executive-level discussions (Feb. 4, 2019), attached hereto as Attachment F (lengthy exhibits omitted).

⁴⁵ See FW Decl. ¶ 31 and Exh. 11 (Letter from Frank Wiczowski, President, MAW Communications, Richard Gray, Mayor, City of Lancaster, and Gary Davidson, Senior Vice President, Chief Information Technology Officer, Lancaster General Health – Penn Medicine to David Bonenberger, PPL (Mar. 23, 2017).

⁴⁶ See FW Decl. ¶ 32 and Exh. 12 (Letter from Phillip M. Fraga, Cohen Law Group (counsel to the City of Lancaster), to David Bonenberger, PPL (Aug. 24, 2017)).

⁴⁷ See FW Decl. ¶ 32.

⁴⁸ See *Zito Canton Complaint*.

operated by the City of Lancaster and LCSC (“existing municipal plant”) transferred to MAW in connection with the December 2014 MCA between MAW and the City.⁴⁹

45. The existing municipal plant had deteriorated to the point where it did not meet carrier standards. Accordingly, rather than overloading its fiber onto obsolete plant, MAW sought to rebuild the deteriorated municipal plant entirely with new, lighter fiber, and remove the obsolete plant, thereby lessening the ultimate load on the poles to which the municipal plant was attached.⁵⁰

46. To maintain connectivity while installing new fiber for its rebuild project, MAW temporarily relocated certain existing municipal plant attachments using industry standard processes. To wit, where there is existing City and/or LCSC fiber on a pole, MAW lifted that fiber onto a temporary attachment (typically, a J-hook), replacing the old installation with new fiber, and planned to remove the old fiber once all telecommunications functions are shifted to the newly installed fiber.⁵¹

47. The temporary attachment method that MAW employed for this portion of the project is specifically recognized by the Pole Attachment Agreement.⁵²

48. The City and LCSC constructed the existing municipal network prior to MAW assuming responsibility for the attachments. PPL had already approved many of the underlying existing attachments made by the City of Lancaster and LCSC that formed this existing backbone network. As MAW became aware that the City and LCSC’s documented records did

⁴⁹ See FW Decl. ¶ 33.

⁵⁰ See FW Decl. ¶ 34.

⁵¹ See FW Decl. ¶ 35.

⁵² See generally PA Article 9 (defining an attachment rebuild project as “the transfer of the original cable to a temporary attachment position (normally a j-hook) so that a new cable can be installed on the bolt in the original attachment position,” requiring that the “original cable shall be removed after the new cable is placed in service” and providing other terms for this type of project).

not accurately depict the existing municipal plant in its entirety, MAW surveyed and documented all of the municipal network attachments to PPL poles prior to beginning the rebuild.⁵³

49. In recently provided PPL documentation of the existing City and LCSC authorized attachments, MAW identified a substantial number of alleged unauthorized attachments that were made by the City and/or LCSC prior to MAW assuming responsibility for the attachments. Virtually all of the currently alleged unauthorized attachments associated with MAW's backbone network were identified in the data MAW provided to PPL in 2016. Moreover, all of the alleged unauthorized attachments in the J-and-raise project were made by either the City or LCSC prior to MAW assuming the network in 2015.⁵⁴

50. NESC Rule 238 governs vertical clearance of span wires and brackets from communication lines and equipment. Table 238-2 sets forth the vertical clearance required for wires and brackets carrying luminaires (street lights) and traffic signals that are and are not effectively grounded. The clearance requirement for effectively grounded streetlights is 4 inches (except where communications lines use support arms). Until 2017, the clearance requirement for "not effectively grounded" streetlights located above communications messengers was 20 inches.⁵⁵ In 2017, the NESC clearance requirement for "not effectively grounded" streetlights located above communications messengers changed from 20 inches to 40 inches.⁵⁶ NESC rule 013.B. grandfathers existing installations provided they comply with the rules that were in effect at the time of the original installation, until they are brought into compliance with rules in a subsequent edition.⁵⁷ Accordingly, any communications strand attachments 20 or more inches

⁵³ See FW Decl. ¶ 36.

⁵⁴ See MW Decl. ¶ 5.

⁵⁵ See Lloyd Decl. at Exh. 1 (Table 238-2 from NESC 2012 edition).

⁵⁶ See Lloyd Decl. at Exh. 2 (Table 238-2 from NESC 2017 edition).

⁵⁷ See Lloyd Decl. at Exh. 3 (NESC Rule 013).

below a streetlight made prior to the effective date of the NESC 2017 edition are compliant, until PPL or the City brings the streetlights into compliance with the 2017 edition, which it should do by grounding the streetlights.⁵⁸

51. In April 2015, MAW notified Mr. William Klokis, PP&L Project Manager Reliability Programs and Pole Attachments, of the plans for the rebuild project for approval prior to commencing construction. MAW's president, Mr. Wiczkowski, emailed Mr. Klokis to notify him that MAW would assume responsibility for the 475 existing LCSC fiber attachments and attached the necessary paperwork.⁵⁹ MAW notified Mr. Klokis that the existing City and LCSC cable plant was "not up to carrier standards," and MAW had thus planned to J-and-raise the substandard plant so that it could replace it with new fiber, which would "ultimately result in a safer and more robust plant"⁶⁰ The J-and-raise is expressly recognized as a permissible rebuild method in the parties' Pole Attachment Agreement. Mr. Klokis replied that he would "work with [his] team to accomplish this in a timely manner."⁶¹

52. At the time the project was approved by Mr. Klokis, MAW did not submit Form 4834 because Mr. Klokis, a PPL employee for over 45 years, did not require it and the same substantive information required by the Form was included in MAW's emails to Mr. Klokis.⁶²

⁵⁸ See Lloyd Decl. ¶ 6.

⁵⁹ See FW Decl. ¶ 37 and Exh. 13 (Email from Frank Wiczkowski to William P. Klokis (Apr. 7, 2015)).

⁶⁰ See FW Decl. ¶ 37 and Exh. 13 (Email from Frank Wiczkowski to William P. Klokis (Apr. 7, 2015)). MAW acknowledged in its communications with Mr. Klokis that while its initial plans had been to overlash fiber on the existing plant, MAW determined that due to condition issues it would be best to remove existing plant and replace it completely with new, lighter fiber. *Id.* This method meant that MAW would take down the old plant only after the new fiber was operating to avoid any service interruptions. See FW Decl. ¶ 37.

⁶¹ See FW Decl. at Exh. 14 (Email from William P. Klokis to Frank Wiczkowski (Apr. 8, 2015)).

⁶² See FW Decl. ¶ 38.

53. Upon information and belief, Mr. Klokis subsequently left his employ with PPL at some point in 2015. As of January 24, 2019, he is listed as semi-retired at PPL on LinkedIn.⁶³

54. Consistent with its customary practice, MAW attempted to contact Mr. Klokis in December 2015 to notify PPL that it J-and-raised the old municipal network on approximately 900 existing attachments and to submit its completed documentation to PPL, but because Mr. Klokis' phone number had been disconnected and email address no longer existed in PPL's system, MAW was unable to reach him.⁶⁴

55. On January 16, 2016, after MAW was unable to reach Mr. Klokis despite multiple attempts, MAW sent a letter informing PPL that it had J-and-raised the municipal network and noting that its engineering documents were available to be submitted to PPL.⁶⁵

56. In March 2016, after submitting its first applications for the new build portion of the LanCity Connect network, MAW once again submitted all of the J-and-raise rebuild pole attachment records to Mr. Ryan Yanek, Project Manager for Distribution Asset Management at PPL. PPL has repeatedly refused to accept this data from MAW.⁶⁶

57. Unfortunately, LCSC had insufficient funds to upgrade its existing security cameras to be compatible with the new, single-mode fiber network. As a result, the older, raised network could not be timely removed without disrupting the operation of the existing security cameras. Since then, LCSC has obtained the funds, but PPL refuses to allow the requisite work

⁶³ See FW Decl. ¶ 39.

⁶⁴ See FW Decl. ¶ 40.

⁶⁵ See FW Decl. ¶ 41 and Exh. 5 (Letter from Frank Wiczowski, President, MAW Communications, to PPL Joint Use – Pole Attachments Division (Jan. 15, 2016).

⁶⁶ See FW Decl. ¶ 42 and Exh. 15 (Excerpt of testimony of Ryan Yanek, PPL (Mar. 28, 2018) at 42:3-14 (admitting that MAW had offered pole profile sheets to PPL on multiple occasions and that Mr. Yanek rejected same)); MW Decl. ¶ 6.

to be done on the poles to facilitate the transition of the traffic sensors and cameras to the single mode network.⁶⁷

Customer Service Drop Facilities

58. Throughout 2017, MAW deployed customer service drop attachments to provide broadband service to residents and businesses using the rebuilt municipal network in the City of Lancaster.⁶⁸

59. Section 1.18 of the Pole Attachment Agreement defines “Service Drop Attachment” as “[a] separate point of attachment on PPL’s poles used to support one or more service cables that extend from Licensee’s attachments on PPL’s poles to a point of service on a customer’s premises. This shall be considered a cable attachment for which an attachment fee is required.”⁶⁹

60. The customer service drop attachments that MAW deployed in 2017 meet the definition of “Service Drop Attachment” in Section 1.18 of the Pole Attachment Agreement.⁷⁰

61. As noted above, MAW utilizes lightweight, all-dielectric self-supporting (“ADSS”) fiber cable for its service drops. This material differs significantly from the facilities used for its backbone network. In addition, the feeder (backbone) cables are supported by steel strand, adding weight and conductive properties that do not exist for the ADSS fiber attachments.⁷¹

62. As per the Pole Attachment Agreement, MAW was not required to submit applications to PPL for service drop attachments. As Section 6.4 of the agreement states: “***With***

⁶⁷ See FW Decl. ¶ 43.

⁶⁸ See FW Decl. ¶ 44.

⁶⁹ PA Section 1.18.

⁷⁰ PA Section 1.18.

⁷¹ See Lloyd Decl. ¶ 5.

the exception of service drop attachments and lashing attachments to Licensee's own cable, no initial or additional attachment is allowed on a PPL pole without the prior submission of an attachment installation application and PPL's subsequent written authorization."⁷²

63. Contrary to the terms set forth in the Pole Attachment Agreement, PPL now contends that "service drop attachments" cannot exceed more than four poles, three spans in length. PPL also now requires MAW to submit an application for each service drop, which must be approved by PPL prior to attachment. At points, PPL has also taken the position that, contrary to the Pole Attachment Agreement, no service drops may be attached without prior application. Consequently, PPL claims that MAW's service drop attachments, which typically extend beyond four poles, are unauthorized. This definition is not a part of the Pole Attachment Agreement, nor can it be found in Appendix D to the Pole Attachment Agreement, which contains PPL's utility specifications. At a minimum, this four pole, three span definition of service drop was not the applicable PPL standard at the time that MAW installed these service drops in 2017 and is not an available published standard as of the date of this filing.⁷³

64. As explained above, PPL repeatedly rejected MAW's submissions of all attachment records regarding the rebuild of the existing fiber backbone. Consequently, PPL did not have accurate records of MAW's rebuild of existing attachments in the City. As a result of its incomplete records, PPL argues that all of MAW's service drop attachments do not originate from an authorized attachment and are thus subject to removal. MAW was not aware that PPL classified certain attachments in the rebuild network as unauthorized until 2018.⁷⁴

⁷² PA Section 6.4 (emphasis added).

⁷³ See FW Decl. ¶ 45 and Exh. 16 (Excerpt of testimony of Ryan Yanek, PPL (Mar. 28, 2018) at 68:16-69:4 (explaining PPL's late 2017 revision to its standards without notification to MAW)).

⁷⁴ See FW Decl. ¶ 46.

65. Because PPL claims these service drops cannot be classified as service drops and are attached to purportedly “unauthorized” backbone network, PPL has removed over 100 service drop attachments made by MAW, which has resulted in a termination of telecommunications service to over 70 of MAW’s customers, including health care facilities.⁷⁵

66. The City has agreed to transfer any remaining fiber network attachments to MAW provided PPL approves a remediation plan submitted by MAW in an effort to address PPL’s unauthorized attachment allegations. PPL requires the City to agree to the transfer before PPL will approve MAW’s remediation plan; a plan that PPL continues to contend is unacceptable. PPL will not approve MAW’s remediation plan, and the City will not transfer its attachments to MAW, which would render those attachments lawfully recorded and resolve the missing paperwork issue; meanwhile, MAW is being denied access to resolve service outages or perform routine maintenance on its facilities, attach new facilities to PPL poles and its network is being dismantled.⁷⁶

PA PUC Investigation of PPL Alleged Safety Violations and Resolution

67. In November 2017, PPL contacted the PA PUC alleging MAW had created exigent safety violations by making unauthorized attachments to PPL poles.⁷⁷

68. On December 15, 2017, the Bureau of Investigation and Enforcement (“I&E”) of the PA PUC advised MAW that it had initiated an informal, confidential investigation regarding safety concerns related to PPL’s allegations and that MAW must cease and desist from any deployment on PPL poles. Despite the fact that the PA PUC’s informal complaint process is nonpublic information, and the presence of a “confidential and proprietary” notice at the bottom

⁷⁵ See MW Decl. ¶ 7.

⁷⁶ See MW Decl. ¶ 8.

⁷⁷ See FW Decl. ¶ 47.

of the PA PUC official's email, PPL released this information to the press on December 19, 2017.⁷⁸

69. On December 6, 2017, MAW, PPL, and the PA PUC met in the field to review all alleged safety violations. The same day, before the PA PUC had an opportunity to evaluate the allegations in the field, and without notice to anyone participating at the meeting, PPL filed its breach of contract claim against MAW and Mr. Wiczowski.⁷⁹

70. In December 2017, MAW hired a third-party engineering firm, Robson Forensics, to review the alleged exigent safety violations. The report of two professional engineers concluded that there were no exigent safety violations made by MAW. MAW submitted this report to the PA PUC.⁸⁰

71. In an email dated December 29, 2017, counsel to the PA PUC communicated its position that the dispute between the parties was primarily legal in nature (i.e., involved an interpretation of the recently changed NESC standards and not exigent safety violations) and thus not within the PUC's jurisdiction.⁸¹

72. On January 17, 2018, the PA PUC ended its investigation.⁸²

⁷⁸ See FW Decl. ¶ 48.

⁷⁹ See FW Decl. ¶ 49.

⁸⁰ See FW Decl. ¶ 50 and Exh. 17 (Daryl L. Ebersole, P.E. & Jeffrey M. Kobilka, P.E., Robson Forensics, Engineer's Report of the Safety of MAW Communications Fiber Optic Cable Installation (Jan. 7, 2018)).

⁸¹ See FW Decl. ¶ 51 and Exh. 18 (Email from Brad Gorter, Prosecutor, PA PUC, to Michael J. Shafer, PPL; Jeffrey Franklin and Eric Winter, Prince Law Group (counsel to MAW); Joseph D'Amico, Fitzpatrick Lentz & Bubba (counsel to PPL); Frank Wiczowski, MAW; and Brent Killian (Dec. 29, 2017)).

⁸² See FW Decl. ¶ 51 and Exh. 19 (Letter from Michael L. Swindler, PA PUC, to Jeffrey Franklin (Jan. 17, 2018)).

PPL's Lehigh County Lawsuit

73. On December 5, 2017, PPL filed suit against MAW in the Court of Common Pleas of Lehigh County, Pennsylvania, alleging that MAW had made unauthorized attachments in violation of PPL and NESC standards.⁸³ PPL sought an injunction that MAW (1) produce all records of every attachment made by MAW to PPL facilities, (2) retain qualified electrical workers to remove every unauthorized attachment, and (3) comport itself consistent with its obligations under the Pole Attachment Agreement.⁸⁴

74. On December 19, 2017, MAW and PPL entered into a Stipulation (“December 2017 Stipulation”) that temporarily resolved the issues set forth in PPL’s petition.⁸⁵ MAW—in consideration of feedback received from its customers, including the City and LGH—believed that entering into the December 2017 Stipulation was the only way to avoid having its attachments removed and services disrupted.⁸⁶

75. The Lehigh County court adopted the December 2017 Stipulation as an Order of Court.⁸⁷ Per the December 2017 Stipulation MAW agreed, *inter alia*, to resubmit applications for all allegedly unauthorized attachments to PPL poles using PPL’s online application portal and that it follow the Pole Attachment Agreement process through the online portal “when submitting applications for any future work involving the rebuild of the Lancaster Community Safety Coalition network and/or any service drops.”⁸⁸ To avoid removal of its attachments and disruption of its services, MAW also agreed to obtain the prior approval of PPL before

⁸³ See Lehigh County Complaint.

⁸⁴ Lehigh County Complaint at 11-12.

⁸⁵ See Agreement, No. 2017-C-3755 (filed Dec. 21, 2017).

⁸⁶ See FW Decl. ¶ 53.

⁸⁷ See Order, No. 2017-C-3755 (filed Dec. 21, 2017).

⁸⁸ Dec. 2017 Stipulation at 3.

“accessing, working on, or connecting to any of PPL’s poles, including those on which MAW has already made attachments.”⁸⁹

76. Notably, the online portal requires attachers to choose a type of attachment—e.g., “Typical Attachment/Removal Application,” “NJUNS Ticket,” “Relocation Project.” Until late July/early August 2018, the online application portal did not include a “Rebuild” type of attachment. PPL later used this failure to reject and reset MAW’s attachment applications that were submitted four months earlier using the closest available category.⁹⁰

77. While MAW disputes PPL’s allegations in this case, MAW’s CEO Frank Wiczowski entered into the December 2017 Stipulation believing that doing so would lead to a resolution that would enable MAW to resume network construction and maintenance. MAW did not anticipate that PPL would use the December 2017 Stipulation to begin removing MAW’s customer service drops, or that over a year later, MAW would still be denied access to PPL poles.⁹¹

78. NESC Rule 214.A.5 differentiates required management of serious safety issues from other compliance issues, to wit: “Lines and equipment with recorded conditions or defects that would reasonably be *expected to endanger human life or property* shall be promptly corrected, disconnected, or isolated. . . . Other conditions or defects shall be designated for correction.”⁹² Moreover, under the terms of the Pole Attachment Agreement, MAW is afforded 180 days to remediate a non-compliant attachment; should MAW not meet this timeframe for remediation, only then can PPL, at MAW’s expense, can remediate the compliance issue.⁹³

⁸⁹ Dec. 2017 Stipulation at 2.

⁹⁰ See Lloyd Decl. ¶ 7 and Exh. 4 (Aug. 16, 2018 email rejecting April 25, 2018 application).

⁹¹ See FW Decl. ¶ 54.

⁹² See Lloyd Decl. at Exh. 5 (NESC Rule 214.A.5 (emphasis added)).

⁹³ See PA Section 5.4.

79. After a two-day hearing in March 2018, the Lehigh County Court entered an Order on April 13, 2018 (“April 2018 Order”) vacating the December 2017 Stipulation and setting forth new terms for compliance.⁹⁴ Per the April 2018 Order, MAW did not access, work on, or connect to any of PPL’s poles without PPL’s prior approval, which the court ordered PPL to provide “as promptly as the situation may reasonably require giving priority to safety concerns and minimizing disruption of service to critical public services.”⁹⁵ MAW was to submit applications using PPL’s portal for “all unauthorized attachments” to PPL poles, which MAW did promptly. While the April 2018 Order permitted PPL to remediate or remove any unauthorized attachment if necessary, it also obligated PPL *to promptly approve MAW’s applications* and to minimize disruption of service to MAW’s customers. Instead, PPL has not approved any of MAW’s applications, has denied MAW the ability to work repair its network, and systematically removed MAW service drops in June, July and September 2018, resulting in service disruptions.⁹⁶

80. PPL’s allegations in the Lehigh County Court proceeding conflate the work that was the subject of MAW’s applications and the work that MAW actually performed. As noted above, MAW has not made any attachments for the “new build” network since having received the unreasonably high make-ready estimates. PPL incorrectly portrayed MAW as having made attachments for its “new build” network when in fact MAW did not proceed with those attachments. The attachments that PPL claims to be “unauthorized” were either pre-existing attachments (made by the City and LCSC), J-and-raise temporary rebuild construction (permitted by the parties’ Pole Attachment Agreement and authorized by Mr. Klokis), or customer service

⁹⁴ See FW Decl. ¶ 55 and Exh. 20 (Order, No. 2017-C-3755 (filed Apr. 13, 2018)).

⁹⁵ See FW Decl. ¶ 55 and Exh. 20 (Order, No. 2017-C-3755 (filed Apr. 13, 2018)).

⁹⁶ See FW Decl. ¶ 55.

drops (authorized by the parties' Pole Attachment Agreement). PPL also mischaracterized MAW's attachments in oral representations to the Judge as creating widespread, exigent, life-threatening safety issues. In fact, PPL's initial and subsequent correspondence with MAW indicated that of the many purported "unauthorized" attachments, only very few attachments presented safety issues.⁹⁷

81. Despite this, under the shield of the Lehigh County Court proceeding, PPL has removed more than 100 of MAW's attachments and, as explained below, is being denied access to repair service outages.⁹⁸

PPL's Ongoing Refusal to Process MAW's Applications

82. Despite the fact that MAW has in good faith complied with the terms of the April 2018 Order, PPL refuses to timely process any of MAW's many pending attachment applications and continues to modify its application procedures, making it impossible for MAW to comply with PPL's shifting demands.⁹⁹

83. On April 25, 2018, MAW resubmitted the rebuild information, using PPL's Form 4834, along with supporting drawings for the J-and-raise rebuild project ("rebuild paperwork").¹⁰⁰ As an extra step to ensure against PPL's rejection of MAW's rebuild paperwork submission, MAW also resubmitted its rebuild applications for the J-and-raise rebuild attachments via the online portal on June 4, 2018. PPL rejected both the online portal submissions, because they were not filed in the correct portal project "type," which PPL had not

⁹⁷ See FW Decl. ¶ 56 and Exh. 21 (Letter from Michael J. Shafer to Frank T. Wiczkowski re: Unauthorized Attachments to PPL Electric Poles (Nov. 3, 2017) (indicating that of the 30 purported unauthorized attachments, only four poles had clearance violations)).

⁹⁸ See Lloyd Decl. ¶ 9.

⁹⁹ See FW Decl. ¶ 57.

¹⁰⁰ See FW Decl. ¶ 58 and Exh. 22 (MAW rebuild application paperwork submitted to PPL (Apr. 25, 2018)).

yet created. On August 2, 2018, MAW resubmitted all rebuild applications via the portal using the newly created application type; PPL reset the submission date to the two month later date.¹⁰¹

84. On August 16, 2018, PPL denied MAW's rebuild paperwork because it was not submitted prior to the work being completed, allegedly lacked sufficient detail, and because PPL changed its policy in August 2018 to now require these applications to be submitted via its online portal. At no point did PPL specify the detail that MAW's applications were missing; MAW included all of the information required on the form as well as maps and drawings. PPL constantly changed the reasons why it would not process MAW's applications.¹⁰²

85. Separately, MAW submitted 103 service drop applications for all existing 12-count distribution fiber circuits by April 30, 2018 notwithstanding the parties' dispute concerning the definition of service drop in the parties' Pole Attachment Agreement.¹⁰³

86. MAW also submitted a total of 38 backbone applications for all existing 96- and 144-count feeder cable circuits by June 4, 2018.¹⁰⁴

87. At the June 6, 2018 meeting between PPL, Lancaster City, and MAW, MAW notified PPL that all applications had been submitted through PPL's portal per the April 2018 Order. Despite the Court's instruction to MAW to submit, and PPL to promptly approve, applications for the disputed attachments, at that meeting, Mr. Yanek questioned why MAW had filed the applications and indicated that it would not review these applications.¹⁰⁵

88. At present, MAW has 76 applications listed as "Pending Admin Review," 48 applications listed as "In Review," and 17 applications listed as "Incomplete" in PPL's online

¹⁰¹ See FW Decl. ¶ 58.

¹⁰² See Lloyd Decl. at Exh. 4 (Aug. 16, 2018 email rejecting April 25, 2018 application).

¹⁰³ See Lloyd Decl. ¶ 12.

¹⁰⁴ See Lloyd Decl. ¶ 13.

¹⁰⁵ See MW Decl. ¶ 9.

portal. MAW resubmitted the latest such batch of applications on August 2, 2018, over five months ago.¹⁰⁶

89. At the July 2, 2018 meeting between PPL, the City, and MAW, Mr. Yanek told MAW that its applications were submitted incorrectly with the wrong application type, and were not in the right order for review. When asked how to correct the “type” and application order, Mr. Yanek responded that he would set the applications back to an “Incomplete” status purportedly to allow MAW “to make adjustments to applications before Make Ready Survey and Design work begins.” In fact, doing so simply restarted the clock and further delayed the authorization of the attachments, enabling PPL to continue removing drop attachments to the backbone attachments that were the subject of the stalled applications.¹⁰⁷

90. At some point between the June 15 meeting and August 2018, PPL created a new “rebuild” job type in its portal, but did not officially notify MAW of the procedural change. MAW learned of the change on a conference call when Mr. Yanek raised the issue as an aside. PPL has consistently taken the position that attachers must monitor the PPL website to learn of changes, and that it will not notify attachers directly of changes to the application process. MAW resubmitted the applications for its backbone promptly after confirming this was PPL’s preferred new process for J-and-raise rebuilds. When these applications were completed and resubmitted on August 2, 2018, the submission timestamp was changed to the new, four-month later date.¹⁰⁸

91. Several of MAW’s August 2018 resubmitted applications have been marked incomplete, but PPL has provided no details as to why, citing only to a contractual provision that

¹⁰⁶ See Lloyd Decl. ¶ 14.

¹⁰⁷ See MW Decl. ¶ 10 and Exh. 1 (Email from Ryan Yanek to Mindy Wiczowski, et al. (July 3, 2018)).

¹⁰⁸ See Lloyd Decl. ¶ 15.

it claims allows PPL to stop processing MAW's applications based on MAW's refusal to pay the disputed 2016 charges and filing the rebuild application after the construction was complete. MAW's J-and-raise submission in 2018 was also consistent with PPL's specifications on their website and associated documentation at the time of submission in 2018.¹⁰⁹

92. As a result of its dispute regarding the December 2016 quotes with MAW and the Lehigh County lawsuit, PPL has denied MAW access to all PPL poles across the entirety of PPL's substantial pole footprint in Pennsylvania.¹¹⁰

93. PPL has stated that until MAW pays PPL for the December 2016 disputed pre-engineering costs as well as other charges including disputed unauthorized attachment penalties, PPL will not review or approve any connections to PPL poles.¹¹¹ PPL's counsel made this clear in correspondence, stating: "***[I]t is PPL's policy to not consider any additional attachment applications until past due make ready invoices are paid.*** If MAW wants PPL to consider its new attachment applications it must first satisfy its past due invoices from 2016. Otherwise MAW's new applications to remediate the unauthorized attachments will not be considered by PPL."¹¹²

¹⁰⁹ See Lloyd Decl. ¶ 16.

¹¹⁰ See FW Decl. ¶ 60.

¹¹¹ To the extent PPL relies on PA Section 12.5 as justification for its refusal to process MAW's applications, that term is an unjust and unreasonable term and condition of the Pole Attachment Agreement that is therefore not enforceable. MAW is preparing to file a separate FCC complaint regarding the unreasonable rates, terms and conditions imposed upon MAW pursuant to the parties' Pole Attachment Agreement.

¹¹² See FW Decl. ¶ 61 and Exh. 23 (Email from Michael J. Shafer, Counsel, PPL, to Eric Winter and Jeffrey Franklin (July 18, 2018) (emphasis added)).

94. Relying upon Section 12.5 of the parties' Pole Attachment Agreement, PPL refuses to process any of MAW's attachment applications, including those unrelated to the Lehigh County court order, based on the disputed 2016 invoices.¹¹³

95. As a result of this denial of access, MAW has not been allowed to reconnect customers that have lost service or will lose service—even in areas unrelated to the disputed invoices in the City of Lancaster—if the loss of service touches a PPL pole.¹¹⁴

96. In a separate incident on June 12, 2018, a rental truck accidentally removed some of MAW's lines in the City (in addition to another provider's cable lines), disconnecting service to two of MAW's customers. MAW promptly applied to PPL to replace those damaged lines and restore service to its customers.¹¹⁵ On June 14, PPL denied MAW's request to repair its severed service drop "because it originates from Unauthorized Attachments."¹¹⁶

97. Since June 2018, PPL has removed over 100 of MAW's service drop attachments because it claims the service drops are attached to "unauthorized" backbone network. In November 2018, PPL informed MAW that an additional 50 service drop attachments would be removed resulting in the loss of service for an additional 57 of MAW's customers.¹¹⁷

98. PPL has told MAW that its attachments and service drops would be removed, rather than allowing MAW to fix noncompliance (if any) in place because allowing the attachments to remain would "reward bad behavior." In fact, PPL has rejected all of MAW's

¹¹³ See FW Decl. ¶ 62.

¹¹⁴ See MW Decl. ¶ 11. MAW was authorized to restore connections to two customers affected by ice damage on January 22, 2019, however, all prior and subsequent requests, including two outages on January 31, 2019 that affected three customers, have been refused. *Id.*

¹¹⁵ See FW Decl. ¶ 63 and Exh. 23 (Email from Jeffrey Franklin, Prince Law Group (counsel to MAW), to Joseph D'Amico, Fitzpatrick Lentz & Bubba (counsel to PPL) and Michael J. Shafer, PPL (June 14, 2018)).

¹¹⁶ See FW Decl. ¶ 63 and Exh. 24 (Email from Ryan Yanek, PPL, to Frank Wiczowski, MAW (June. 14, 2018)).

¹¹⁷ See FW Decl. ¶ 64.

remediation plans and settlement offers that include any remediation, claiming all unauthorized attachments will be removed. PPL will not approve any plan or settlement offer that includes the remediation of attachments.¹¹⁸

99. As explained above, PPL and MAW have engaged in extensive executive-level discussions regarding its dispute. Further, the parties are currently engaged in litigation in state court. In addition, MAW has offered terms by which the parties could settle their disagreements and the resultant the Lehigh County lawsuit, but they have been rejected by PPL. PPL also previously refused to engage in FCC mediation related to this dispute. As a result, additional executive-level meetings between MAW and PPL would not be fruitful at this time.¹¹⁹

III. DISCUSSION

A. PPL Has Engaged in an Ongoing Unlawful Denial of Access

100. Federal law requires a pole owner to provide nondiscriminatory access to its poles, ducts, conduits, and rights of way upon just and reasonable rates, terms, and conditions.¹²⁰

101. A pole owner may only deny access to its poles should the proposed access affect legitimate safety, reliability, and generally applicable engineering standards.¹²¹ A pole owner's denial of access must be specific and "include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards."¹²²

102. By limiting denial of access to poles to these discrete reasons, Congress and the Commission recognized that the attacher is at the mercy of the pole owner, given its "local

¹¹⁸ See MW Decl. ¶ 12.

¹¹⁹ See FW Decl. ¶ 65.

¹²⁰ See 47 U.S.C. § 224(b)(1); 47 C.F.R. § 1.1401.

¹²¹ See 47 U.S.C. § 224(f).

¹²² 47 C.F.R. § 1.1403(b).

monopoly ownership or control of poles” and “exclusive control over access to pole lines.”¹²³ A denial of access for limited reasons helps ensure the Commission can promote its goal to accelerate the deployment of broadband infrastructure.

103. As detailed below, PPL has expressly denied MAW access to its poles on an ongoing basis, citing technicalities stemming from its transition to an online application portal and procedural issues rather than legitimate safety, reliability, and generally applicable engineering standards. In furtherance of its ongoing denial of access, PPL went as far as securing a court order preventing MAW from accessing its plant—even for routine maintenance or service restoration—without PPL’s prior approval, which PPL has consistently and unreasonably denied, thereby harming MAW’s customers, including the City and Lancaster General Hospital, and well as harming MAW’s relationship with its customers and MAW’s relationship with the PA PUC.¹²⁴

1. PPL Has Denied MAW Access to the Rebuilt Network

104. PPL is classifying as “unauthorized” MAW’s rebuild of the municipal network throughout the City and is rejecting MAW’s attempts to correct PPL’s records with MAW’s own contemporaneous records or submit applications via PPL’s portal to correct PPL’s records.¹²⁵

105. PPL claims that MAW failed to follow proper procedure when in 2015 MAW submitted its plans to rebuild the existing municipal network directly to Mr. Klokis—who responded approvingly to MAW’s request—rather than using a particular form or submitting the

¹²³ *Implementation of Section 224 of the Act: A National Broadband Plan for our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240, 5242 ¶ 4 (2011) (“*2011 Pole Attachment Order*”).

¹²⁴ See FW Decl. ¶ 66.

¹²⁵ See FW Decl. ¶ 67.

request through PPL's cumbersome online portal which, at the time, did not recognize rebuilds as a type of activity that could be processed online.¹²⁶

106. PPL's post-hoc rationalization of its denial based on the format of MAW's application is not an accepted reason for denying MAW access under the Commission's rules.¹²⁷

107. PPL has repeatedly changed its application requirements and reset application start dates, resulting in further delay and removal of additional plant. For example, on August 16, 2018, more than four months after MAW submitted its rebuild applications, PPL denied them in part because they were not submitted using the online portal, which PPL did not require until July 30, 2018, long after the applications were submitted, and also because they allegedly lacked unspecified detail.¹²⁸

108. PPL's constant movement of the application requirement goalposts have unlawfully denied MAW access to PPL's poles for reasons that are insufficient for a denial under the FCC's rules.¹²⁹

2. PPL Has Denied MAW Access to Its Service Drops

109. The Commission has held that because service drops are "adjuncts" to attachments subject to the normal application process, service drop applications may be made with reasonable notice but without prior utility approval.¹³⁰

110. PPL claims that MAW's service drop attachments are unauthorized in part because MAW did not receive prior authorization to deploy the service drops, despite the fact

¹²⁶ See FW Decl. ¶ 68.

¹²⁷ See 47 C.F.R. § 1.1403(a) (explaining that a utility may only deny access where there is "insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes").

¹²⁸ See Lloyd Decl. ¶ 17 and Exh. 4 (Aug. 16, 2018 email rejecting April 25, 2018 application).

¹²⁹ See 47 C.F.R. § 1.1403(a).

¹³⁰ See *Salsgiver Commc'ns, Inc. v. N. Pittsburgh Tel. Co.*, 22 FCC Rcd. 20536, 20543-44 ¶¶ 24-25 (Enf. Bur. 2007) (invalidating a provision requiring 30-day advance notice prior to attaching or removing a service drop attachment).

that the parties' Pole Attachment Agreement excludes service drops from the application process.¹³¹ However, under the express terms of the parties' Pole Attachment Agreement, service drops do not require application and prior approval.¹³² As a result, PPL's claim is without merit and its denial contravenes both its own Pole Attachment Agreement as well as clear FCC precedent.¹³³

111. PPL also claims that MAW's service drop attachments are unauthorized because the backbone to which the service drops are attached is also unauthorized. This is similarly not a legitimate basis for denying MAW access to PPL poles because it is wholly unrelated to capacity, safety, reliability, or engineering standards.¹³⁴

112. In accordance with the Lehigh County Court's order, MAW nevertheless submitted applications for these existing service drops to comport with PPL's contrary interpretation of the Pole Attachment Agreement.

113. PPL has not approved any of MAW's service drop applications that were submitted pursuant to the court order.

114. Moreover, PPL will not approve MAW's request to repair service drop lines that were damaged due to no fault of PPL or MAW. When MAW applied to PPL to repair lines that were damaged by a rental box truck, seeking to restore service to two MAW customers,¹³⁵ PPL denied MAW's request "because it originates from Unauthorized Attachments."¹³⁶

¹³¹ See FW Decl. ¶ 69.

¹³² See PA Section 6.4.

¹³³ See *Salsgiver*, 22 FCC Rcd. at 20543-44 ¶¶ 24-25.

¹³⁴ See 47 C.F.R. § 1.1403(a).

¹³⁵ See FW Decl. ¶ 71 and Exh. 23 (Email from Jeffrey Franklin, Prince Law Group (counsel to MAW), to Joseph D'Amico, Fitzpatrick Lentz & Bubba (counsel to PPL) and Michael J. Shafer, PPL (June 14, 2018)).

¹³⁶ See FW Decl. at Exh. 24 (Ryan Yanek, PPL, to Frank Wiczowski, MAW (June. 14, 2018)).

115. As a result of PPL's claim that MAW's service drops are unauthorized, PPL has removed 100 service drops attached pursuant to the Pole Attachment Agreement, resulting in a loss of service to at least 70 MAW customers, including critical healthcare facilities.

116. PPL is preventing MAW from accessing its facilities, impairing MAW's ability to repair service outages, including two recent outages on the 600 block of West Chestnut Street, where MAW's facilities were damaged as a result of tree trimming, and the 200 block of West Walnut Street and 300 block of Mulberry Street, where MAW is being denied access to its splice boxes to troubleshoot an outage created by unknown causes.¹³⁷

117. PPL's refusal to grant MAW's applications for service drops and its exercise of such extraordinary measures as to remove MAW's existing plant denies MAW the access it is afforded under Section 224 and the FCC's rules.

3. PPL's Refusal to Process MAW's Pole Attachment Applications Unless MAW Pays Unreasonable and Unsubstantiated Pre-Attachment Engineering and Make-ready Charges Constitutes an Unlawful Denial of Access

118. The Commission has held that a pole owner may not "condition access on payment of a disputed claim," explaining that "[d]ebt collection is not permissible grounds for denial of access."¹³⁸

119. PPL is unlawfully conditioning access to its poles upon MAW's agreement to pay excessive and unsubstantiated pre-attachment engineering charges.¹³⁹

120. PPL has refused to process any pole attachment applications, including new, unrelated applications, unless MAW pays PPL the disputed pre-engineering charges from the

¹³⁷ See Lloyd Decl. ¶ 18.

¹³⁸ *Kansas City Cable Partners v. Kansas City Power & Light Co.*, Consolidated Order, 14 FCC Rcd. 11599, 11606 ¶ 18 (Cable Serv. Bur. 1999).

¹³⁹ See FW Decl. ¶ 70.

2016 quotes in full, as well as other unreasonable charges related to the alleged unauthorized attachments.¹⁴⁰

121. PPL's demands that MAW pay the disputed, unreasonable pre-attachment engineering invoices as a condition to processing MAW's pole attachment applications constitutes an express denial of access. Moreover, PPL's refusal to process any of MAW's applications, including new, unrelated applications, unless MAW pays the disputed amount in full, unlawfully and expressly denies MAW access to PPL's poles.

B. PPL Has Effectively Denied MAW Access to Its Poles

122. As detailed below, PPL has also taken several steps that, while not an express denial, have effectively denied MAW from accessing PPL's poles to attach new facilities or maintain its existing facilities.

1. PPL Has Effectively Blocked MAW From Exercising Its Self-Help Remedies

123. The FCC's rules require pole owners to process attachment applications within a specified time frame; namely, within 45 days of receipt for most orders or within 60 days of receipt for larger orders.¹⁴¹

124. PPL has steadfastly refused to process MAW's applications and has thus failed to meet the FCC's timeframes for application approval, despite PPL's attempts to game the shot clock. PPL wrongfully rejected MAW's applications as incomplete, despite the fact that PPL's application portal categories were insufficient, not MAW's application.¹⁴² For example, MAW

¹⁴⁰ See FW Decl. ¶ 71.

¹⁴¹ See 47 C.F.R. § 1.1420(c) (requiring a utility to respond to a completed application to attach facilities within 45 days of receipt of the application (or within 60 days for larger orders)).

¹⁴² The FCC recently amended its rules to further shorten attachment application timeframes and speed access to poles through a process called One-Touch Make-Ready ("OTMR") that aims to improve competitive attachers' access to poles. See *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and

submitted 38 backbone applications for all existing feeder cable circuits by June 2, 2018. Subsequent to this submission, PPL changed its policy to require MAW's rebuilt backbone applications to use a new "Rebuild" option. Nevertheless, MAW resubmitted its backbone applications on August 1, 2018. PPL has not acted on these applications as of February 6, 2019, approximately **189 days later** or even provided a status update on any of the applications.¹⁴³

125. Should a utility fail to meet the FCC's application timeframes, as PPL has done here, the FCC's rules provide that a prospective attacher may hire a utility-approved contractor to complete the survey and to perform make-ready.¹⁴⁴ In fashioning this self-help remedy, the FCC acknowledged that "time is of the essence" for the success of a proposed attacher's business and that "[r]equesters need a way to obtain access to poles if a utility does not meet the deadlines we impose."¹⁴⁵

126. In this case, because PPL secured a state court order prohibiting MAW from accessing any PPL poles without PPL's prior approval, MAW cannot make use of the appropriate FCC self-help remedies to deploy or maintain its plant despite the fact that PPL continues to delay action on MAW's applications past the FCC's specified deadlines.¹⁴⁶

127. Consequently, PPL's actions constitute an effective denial of access.

Declaratory Ruling, 33 FCC Rcd 7705 (rel. Aug. 3, 2018) ("*OTMR Order*"). In the *OTMR Order*, the FCC adopted a new rule regarding application completeness. See 33 FCC Rcd. at 7735-36 ¶¶ 60-63. Acknowledging that "pole owners are not transparent about telling applicants all information that is required to be included on applications at the time of their submission," the FCC adopted a rule stating that an attachment application is complete "if it provides the utility with the information necessary under the information necessary under the utility's procedures, as specified in a master service agreement or in publicly-available requirements at the time of submission of the application, to make an informed decision on the application." *Id.* ¶ 60.

¹⁴³ See FW Decl. ¶ 71.

¹⁴⁴ See 47 C.F.R. § 1.1420(i).

¹⁴⁵ *2011 Pole Attachment Order* at ¶¶ 49, 51.

¹⁴⁶ See FW Decl. ¶ 73.

2. PPL’s Make-ready Policies Effectively Deny MAW Access to PPL’s Facilities

a. *Mandating the Topmost Position on the Pole Results in Excessive Make-Ready*

128. While the Commission acknowledges that utilities “are entitled to recover their costs from attachers for reasonable make-ready work necessitated by requests for attachment,” utilities may not charge attachers for “unnecessary, duplicative, or defective make-ready work.”¹⁴⁷ Moreover, the Commission has held that a prospective attacher may only be held responsible “for make-ready costs generated by its own attachments;” the utility may not require a prospective attacher to pay for the costs of other entities’ safety violations.¹⁴⁸

129. PPL is unreasonably requiring MAW’s attachments to be placed at the topmost position on its poles, resulting in prohibitively costly make-ready estimates. As explained above, PPL’s unjust policy mandates attachment in the topmost position, even when space is available at other locations within the communications space that do not necessitate make-ready work.¹⁴⁹

130. There is no legitimate safety reason to explain PPL’s requirement that MAW attach in the topmost position. PPL may not charge MAW for unnecessary make-ready work.¹⁵⁰ If an attachment can be made consistent with NESC, it should be permitted. Moreover, if less costly, more efficient make-ready alternatives exist, the Commission has explained that such alternatives should be considered and permitted.¹⁵¹

131. Moreover, PPL’s topmost position requirement, which results in excessive and unnecessary make-ready requirements and costs constitute an unlawful attempt to correct

¹⁴⁷ *Knology, Inc. v. Georgia Power Co.*, 18 FCC Rcd. 24615, 24625 ¶ 26 (2003).

¹⁴⁸ *See In re Cavalier Tel., LLC v. Virginia Elec. and Power Co.*, 15 FCC Rcd. 9563, 9571 ¶ 16 (2000), *vacated on other grounds*, 17 FCC Rcd. 24,414 (2002).

¹⁴⁹ *See* FW Decl. ¶ 25.

¹⁵⁰ *See Knology*, 18 FCC Rcd. at 24625 ¶ 26.

¹⁵¹ *Salsgiver*, 22 FCC Rcd. at 20536 ¶ 19.

preexisting noncompliance not caused by MAW or its attachments.¹⁵² Through this topmost position policy, PPL can correct any previous violations using the process and expenses paid by the prospective attacher.

b. *PPL Has Failed to Substantiate Its Make-Ready Charges*

132. A pole owner is required to provide an attacher with detailed support of its charges for pre-attachment engineering and any proposed make-ready work.¹⁵³ Even before the recent changes to the FCC’s rules, it was well-settled that a utility has “an obligation to provide a reasonable amount of information sufficient to substantiate its make-ready charges.”¹⁵⁴

133. Despite MAW’s requests, PPL declined to provide more detailed information regarding the disputed 2016 invoices.¹⁵⁵ PPL’s invoices, which simply have line items for “Make Ready – Construction” and “Make Ready – Engineering,” do not provide information sufficient for MAW to evaluate or substantiate these charges. PPL’s invoices do not specify unit

¹⁵² See *Cavalier Tel.*, 15 FCC Rcd. at 9571 ¶ 16 (“It is up to [the pole owner] to require other attachers to reimburse [the pole owner] or otherwise pay for corrections of safety violations.”); *Kansas City Cable Partners*, 14 FCC Rcd. at 11606-07 ¶ 19 (“Correction of the pre-existing code violation is reasonably the responsibility of KCPL and only additional expenses incurred to accommodate Time Warner’s attachment to keep the pole within NESC standards should be borne by Time Warner.”).

¹⁵³ In the *OTMR Order*, the FCC clarified what information a utility must provide in its estimate, consistent with prior Commission precedent. See *OTMR Order*, 33 FCC Rcd. 7758-61 ¶¶ 109-13; 47 C.F.R. § 1.1411(d) (requiring a utility to provide an attacher a “detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready . . .” as well as “documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.”). It did so due in part to numerous comments from attachers frustrated “over the lack of transparency of current estimates” for make-ready that “inhibits their ability to plan network expansions,” as well as attachers “experiencing ‘bill shock,’ where a utility’s make-ready invoices far exceed[] the utility’s initial estimates . . .” See *OTMR Order*, 33 FCC Rcd. at 7759-60 ¶ 110.

¹⁵⁴ *Knology, Inc.*, 18 FCC Rcd. at 24641 ¶ 61; see *Salsgiver* 22 FCC Rcd. at 20543 ¶ 22.

¹⁵⁵ FW Decl. at Exh. 23 (Email from Michael J. Shafer, Counsel, PPL, to Eric Winter and Jeffrey Franklin (July 18, 2018) (attempting to clarify that escrow drawdown request was for engineering costs incurred but providing no further detail); *id.* at Exh. 7 (Email from Michael Shafer to Eric Winter and Jeffrey Franklin (July 18, 2018) (explaining that PPL’s lump sum invoices do not provide MAW sufficient detail to substantiate PPL’s charges)).

cost or labor cost per hour, the cost of itemized materials, or other charges for each make-ready task performed by PPL's third-party contractors.¹⁵⁶

134. PPL must provide MAW with an opportunity to review a detailed cost estimate before incurring make-ready construction or engineering charges. Such estimate must provide a reasonable amount of information sufficient to substantiate these charges. PPL's requirement that MAW pay the amounts in dispute on vague and unsubstantiated invoices prior to attaching to PPL's poles effectively denies MAW access.

IV. INFORMATION DESIGNATION

135. The following individuals are believed to have first-hand knowledge of the facts alleged in this complaint:

Frank Wiczowski
President and CEO, MAW Communications
419 Washington Street, PO Box 978, Reading, PA 19603
See Declaration at Attachment A for description of facts within such person's knowledge

Mindy Wiczowski
Vice President of Strategic Development, MAW Communications
419 Washington Street, PO Box 978, Reading, PA 19603
See Declaration at Attachment B for description of facts within such person's knowledge

Eron Lloyd
Director of Information and Communication Technology
419 Washington Street, PO Box 978, Reading, PA 19603
See Declaration at Attachment D for description of facts within such person's knowledge

V. COUNTS

Count I:

Ongoing Denial of Access

136. MAW incorporates by reference as if fully set forth herein paragraphs 1 through 134 of this Complaint.

¹⁵⁶ See FW Decl. ¶ 26.

137. PPL's refusal to accept or process MAW's pole attachment applications until MAW pays its disputed invoices for the third party contractor pre-engineering and make-ready design in full is a violation of PPL's duty to provide access to any pole it owns or controls, except in narrowly defined circumstances, which do not apply here. *See* 47 C.F.R. § 1.1403(a).

138. PPL's refusal to accept or process MAW's pole attachment applications until MAW pays its unsubstantiated, disputed third party contractor pre-engineering and make-ready design in full is a violation of PPL's duty to provide access to any pole it owns or controls, except in narrowly defined circumstances, which do not apply here. *See* 47 C.F.R. § 1.1403(a).

139. PPL's denial of access is not legitimately based on capacity, safety, reliability, or engineering concerns as to any particular pole, or in general.

VI. RELIEF REQUESTED

Pursuant to Section 1.1410 of the Commission's rules, MAW respectfully requests an expedited order from the Commission:

- a. Directing PPL to immediately allow MAW access to its network so that it can restore service outages and further maintain the network;
- b. Prohibiting PPL from removing additional attachments and allowing MAW to remediate any compliance issues per the terms of the parties' Pole Attachment Agreement;
- c. Directing PPL to promptly process all of MAW's pending attachment applications;
- d. Prohibiting PPL from requiring that MAW to occupy the uppermost position in the communications zone when other space lower on the pole is available to attach consistent with governing safety standards;

- e. Prohibiting PPL from charging MAW to correct pre-existing non-compliant conditions on PPL poles where such work would be required regardless of whether MAW attaches to the pole;
- f. Requiring that PPL provide sufficiently detailed cost information supporting the past and prospective survey and make-ready cost estimates imposed on MAW;
- g. Requiring PPL to collaborate with MAW to identify less costly make-ready alternatives;
- h. Awarding MAW damages for any costs incurred as a result of PPL's removal of MAW's attachments and its failure to process MAW's applications on a timely basis;¹⁵⁷ and
- i. Such other relief as the Commission deems just, reasonable and proper.

Respectfully submitted,

MAW Communications, Inc.

/s/ Maria T. Browne
By its Attorneys
Maria T. Browne
D. Van Fleet Bloys
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006
202-973-4281 (Direct Phone)
202-973-4481 (Direct Fax)
202-973-4200 (Main Phone)
202-973-4499 (Main Fax)
mariabrowne@dwt.com
vanbloys@dwt.com

Date submitted: February 8, 2019

¹⁵⁷ The amount of damages cannot yet be determined because the information is partly in the possession of the complaining party and partly unknown to the complaining party because removal is ongoing and MAW has not been able to restore its attachments.

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2019, I caused a copy of the foregoing Pole Attachment Complaint, exhibits and declarations in support thereof, to be served on the following (service method indicated):

Marlene J. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554
(service copies via electronic filing)

PPL
2 N. Ninth Street
Allentown, PA 18101-1179
(service copies via hand delivery)

Secretary's Bureau
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
(service copies via U.S. mail)



Maria T. Browne